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May 20, 2002

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re:    *Ex Parte* Submission in GN Docket No. 00-185 and CS Docket No. 02-52, CC  
Docket No. 96-98 and WT Docket No. 99-217, and CC Docket 98-146.

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, the Commission's Local and State Government Advisory Committee (the "LSGAC"), on behalf of itself and the other local and state governmental entities listed in Attachment I, submits this notice of *ex parte* communication in the above-captioned proceedings.

On May 17, 2002, the individuals listed in Attachment I, representing the local and state governmental entities and organizations indicated, met at various times during the day with Deputy Chief Jeff Steinberg, Commercial Wireless Division, Wireless Telecommunications Bureau, Associate Chief Jane Jackson, Wireline Competition Bureau and Associate Chief Peggy Greene, Media Bureau. The LSGAC also met with Deputy Chief Thomas Wyatt, Consumer Governmental Affairs Bureau, Deputy Chief Jeanne Kowalski, Wireless Telecommunications Bureau, and Commissioner Kathleen Q. Abernathy.

Representatives of the Industry Rights-of-Way Working Group ("IRWWG") were also present during portions of these meetings. The IRWWG represents the companies and organizations listed in Attachment II.

The discussions addressed concerns regarding broadband deployment, local authority over cable modem service and reasonable compensation for use of local rights-of-way.

In the meeting with the IRWWG, the LSGAC asked the IRWWG to express their concerns with local government activities affecting access to rights-of-way. The IRWWG expressed concern with paying any compensation for rights-of-way and delays caused to right-of-way entry when there is no compensation agreement between the local authority and a telecommunications facilities provider. The IRWWG asserted the industry did not have substantial problems with local government management of the rights-of-way. LSGAC members and staff responded that industry refusal to fairly compensate local governments for use of rights-of-way was unreasonable. Further there was a need for the industry to document the actual scope of the problem of delayed access. Specifically, was this a small number of incidents relative to the number of projects and local jurisdictions across the nation? Was this an endemic source of delay, or an occasional cause of delay to construction projects? Were there other solutions to the problems than federal preemption? If federal preemption was appropriate, how could it be narrowed to the smallest, least intrusive means? Further, the industry needed to engage in discussions with the representatives of local government to address these questions before petitioning the FCC for relief. Good will and serious statistical information should lead both sides to an amicable solution, based on education and agreed-to best practices. The conversation should start with serious management issues. Suggested issues included: appropriate GIS mapping details; appropriate local authority to impose and enforce right of way construction requirements that facilitate multiple operator entry and use of the rights-of-way; joint industry insurance and indemnification pools to equalize the burden on various entrants; agreed standards on "restoration to prior condition" of rights-of-way.

To facilitate a meaningful dialogue between the LSGAC and the Industry Rights-of-Way Working Group on these issues, the LSGAC participants recommended the following. There should be further meetings with the IRWWG. These meetings should address the scope and magnitude of the current disagreement between local and state governmental entities and telecommunications providers regarding broadband deployment and reasonable management and compensation practices for use of rights-of-way. The meetings should also determine the range of options available to remedy the existing disagreements. The LSGAC requested the industry review and respond to the recent "Local Officials Guide: Telecommunications and Rights-of-Way" published jointly by the National League of Cities; National Association of Counties; The United States Conference of Mayors; the International Municipal Lawyers Association; and the National Association of Telecommunications Officers and Advisors. Using that document as a starting point, the LSGAC offered to dialogue further with the IRWWG at the next LSGAC meeting.

After the departure of the IRWWG from the meeting, Commission representatives briefed the LSGAC on the status of cable modem, wireline deregulation and competitive networks proceedings and the current status of consumer complaints about cable modem service. The LSGAC expressed its concern with the Commission's March 15, 2002 decision declaring cable modem service an interstate information service, and the public comments of Kenneth Ferree, Chief of the Commission's Media Bureau, relating to cable modem franchise fees in the

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wake of this decision. Also, the LSGAC expressed its opposition to Dean Snowden's letter to Ken Fellman proposing that cable modem consumer complaints received by the Commission should be forwarded to local franchising authorities for appropriate handling.

The LSGAC asked the Commission staff in the persons of Mr. Snowden and Mr. Ferree to clarify the Commission's position with respect to the scope of local authority over cable modem service during the pendency of the current NPRM. In particular the LSGAC asked the two bureau chiefs to address the consumer complaint issue and reconcile the apparent disconnect between the Commission's classification of cable modem service and the appropriate forum for consumer complaints about this service.

Thank you for your attention to this matter. Please direct any questions regarding this *ex parte* submission to the undersigned.

Respectfully submitted,

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MILLER & VAN EATON, P.L.L.C.

By

Nicholas P. Miller

*On behalf of the Local and State Government Advisory Committee*

**Attachment I**

**Local and State Government Advisory Committee and Staff**

<u>Government/Organization</u>	<u>Representative</u>
NATO	Libby Beaty
Portland, Oregon	Pamela Beery
State of Alaska	Paula Scavera
United States Conference of Mayors	Ron Thaniel
Miller & Van Eaton, P.L.L.C.	Gerry Lederer
Little Rock, Arkansas	Jim Dailey
Plano, Texas	Steve Stovall
Eugene, Oregon	Nathy Nathanson
Miller & Van Eaton, P.L.L.C.	Nick Miller
Montgomery County, Maryland	Jane Lawton
Boston, Massachusetts	Merita Hopkins
Boston, Massachusetts	Christopher Mensoian
NACO	Jeff Arnold
Montgomery County, Maryland	Marilyn Paisner
Arvada, Colorado	Ken Fellman
Dearborn, Michigan	Michael Guido
Dearborn, Michigan	Bill Irving
National League of Cities	Doug Peterson
Lansing, Michigan	David Svanda

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**Attachment II**

**Industry Rights-of-Way Working Group**

**Organization**

**Representative**

Preston Gates  
Cole Raywid  
WorldCom  
WorldCom  
AT&T  
Swidler Berlin  
SBC  
Verizon  
Swidler Berlin  
ALTS  
Sprint  
NTIA

Marty Stern  
Scott Thompson  
Kevin Gallagher  
Karen Johnson  
Frank Simone  
L. Elise Dieterich  
Jay Bennett  
David Mielke  
Kevin Minsky  
Teresa Gaugler  
Pete Sywenki  
Tim Sloan